and full-fledged lawyer, but also to laymen who are either officers of or interested in a corporation. In order to successfully keep in touch with their interests they should at least have a fundamental knowledge of that part of corporate law to which this useful book is devoted. *G. S.*

NOTES ON RECENT LEADING ARTICLES IN LEGAL PERIODICALS.

COLUMBIA LAW REVIEW.—March.

Tort Liability for Mental Disturbance and Nervous Shock. Francis M. Burdick. The paper does not attempt "to settle this mooted question," but does give an excellent review of the American and English cases in which the subject has been given judicial attention. The idea evolved appears to be that, while there is a strong feeling against the tendency to admit injury to the feelings—which is a concrete form of the phrase "mental disturbance and nervous shock"—as a basis for a recovery in damages, yet that tendency is one easily checked, and is, on the whole, growing rather than decreasing.

Expansion of Constitutional Powers by Interpretation. Paul Fuller. This very able paper deals with this question most clearly, taking us over all the necessary steps without stopping our progress by unnecessary turnings or stops by the way. Beginning with the making of the constitution, he shows clearly how the genius of Jefferson foresaw and would have prevented, if possible, the course of interpretation which has so expanded the powers of the constitution. His patriotism is evidenced by these words: "When an instrument admits two constructions, the one safe, the other dangerous, the one precise, the other indefinite, I prefer that which is safe and precise. I had rather ask an enlargement of power from the nation where it is found necessary, than to assume it by a construction which would make our powers boundless. Our peculiar security is in the possession of a written constitution. Let us not make it a blank paper by construction."

From such sentiments we are led down through the tax cases, the bank cases, the discussions on the government and admission of New Mexico, the legal-tender cases, and their gradual extension of powers under the constitution, through an interpretation which felt no such restrictions, until we reach the recent cases in regard to matters arising from the war with Spain. It is a long distance, and the descent from the level of the position taken by Jefferson has been more insidious than rapid. But Mr. Fuller finds no wisdom of the present day adequate to balance that of Jefferson, so he leaves us with these words of Washington, "Let there be no change by usurpation, for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed."

Notice of Acceptance in Contracts of Guaranty. W. P. Rogers. Mr. Rogers says, "The question of notice in contracts of guaranty presents great conflict of authority and surrounds the present state of the law, bearing on that subject, with much interest." The article sustains this statement. The article is interesting, and the contention that there is much confusion of authority is upheld by the cases noted. Yet it is apparently impossible on a subject in which there must inevitably be an almost infinite variety of circumstance that there can be any absolute certainty in the interpretation of the law for all varieties of fact. The

settlement of certain principles, and those very broad in outline, is surely all that can be hoped for in this class of cases, and in many other branches of the law where there is complaint of a conflict.

GREEN BAG.—March.

Federal Regulation of Corporations. A Dangerous Departure. John E. Parsons. This is a remonstrance and a warning. Mr. Parsons—waiving the constitutional questions for a moment—voices the feeling of many of his fellow-citizens when he says, "Much more convincing reasons must be adduced before I can reach the conclusion that there is any necesity for such a change as is proposed in our political system."

Federal Regulation of Corporations. A Public Necessity. William J. Curtis. Here we have a writer asserting a fact in the sub-head of his subject which Mr. Parsons in his last paragraph found did not exist. We seem to have here the corporate view which looks longingly at Federal regulation as a blessed release from vexing state regulations. Mr. Curtis thus unconsciously, and very unintentionally, aids the argument of those who are asserting that Federal control of corporations means ultimately Federal control by corporations.

Resort to the Judiciary to Preserve the Purity of Elections. A Recent Colorado Case Reviewed. William E. Hutton. We are here given an eminently calm and judicial review of the recent exciting election events in Colorado in so far as they were affected by the judicial action here referred to. The tone and attitude of the paper are conservative and the final opinion is expressed as follows:

"The action of the Supreme Court of Colorado relating to the late election is, as the writer believes, one illustration among many to be found in the reports showing how desirable it is that there should prevail a more distinct and historically correct conception of the function of the judiciary. We are prone to lose sight of the reasons for the limitations upon its power, which the great statesmen of earlier days conceived to be of first importance."

HARVARD LAW REVIEW.—March.

Jurisdiction in Actions between Foreigners. A. Pillet. This paper by a French writer gives us first a comparison between the law of America and England and that of France. The former makes no distinction between citizens and foreigners, and the latter refuses jurisdiction in suits between foreigners. In deciding which is the better of the two we are told, "Unquestionably the former." The reasons given for the French position are then examined and the final decision is that to carry these reasons to their logical conclusions would be to reach an absurd position, a result from which the French save themselves by numerous modifications of the principle. We next have an examination as to what this law for natives and for foreigners should be. This is, as the author says, "A subject large enough to fill volumes." He, however, is able to draw the conclusion from his examination that "the French and English-American laws, so absolutely opposed in this matter of jurisdiction, would find every advantage in coming to an understanding and uniting on a general law which would be a satisfactory compromise."

Tide-Flowed Lands and Riparian Rights. William R. Tillinghast. We have here not only a review of the law as it stands upon the subject, but a most interesting historical study, not alone of the English law, but the more difficult matter of its growth and development in the early years of our own colonial life.

The article will no doubt succeed in its object of "calling the atten-

tion of the legal profession to the existence of two distinct theories of shore rights and title existing in this country," and to the reasons why they exist, and it will also give great pleasure to all who have the good fortune to read it.

Waiver in Insurance Cases. John S. Ewart. We are told that the prevailing doctrine as to waiver "proceeds upon a fundamentally erroneous principle; that election, and not waiver, is the doctrine really involved; that waiver is a sort of interloper, if not altogether an impostor; and that the substitution of election for waiver will produce a most substantial and valuable improvement in judicial methods and conclusions." The article is devoted to showing this to be the case and to demonstrating the correctness of the theory upon which it is founded. In doing so the author shows that the insurer tries—and generally succeeds—to eat his cake and have it too. The argument is clear, forcible, and convincing, and the treatment original.

GREEN BAG.—February.

The Legal Side of Joseph W. Folk. K. G. Bellasis. After reading the article the impression left is that we have learned very much about Mr. Folk but very little about his legal side. For it is Mr. Folk, the reformer (or, if that is not the right term, the man who, being a public prosecutor, prosecuted), whom we have been reading about. Doubtless this is inevitable, for it is in his character as Circuit Attorney that men have learned to admire—to wonder at—Mr. Folk. A man who has done the impossible—that which was before he came impossible in Missouri, which still remains impossible in the remaining "organization"-ridden states—fascinates all other men. Yet there is much which those who admire Mr. Folk must regret in this article. It is not that the matter is not interesting or proper of presentation, but because in many things the article seems at least injudicious.

Federal Control of Insurance Corporations. William R. Vance. The President has recommended Federal control of corporations engaged in inter-state business and his Commissioner of Corporations has urged it in his report. Mr. Vance, who is an acknowledged authority on this subject, takes up state control of the insurance corporations and finds it most unsatisfactory, especially as it is administered "by dishonest officials." He, therefore, welcomes the suggestion of one Federal law to "wipe out" the mass of state legislation on the subject. He confesses that Federal control "would strip the states of a large measure of their power, and deprive them of a large portion of their revenues." He thinks we cannot expect them to accede to this, and he does not advocate so great an impairment of the original foundations of the Union. He also says that "the people might learn too late that national control of corporations will result in national control by corporations." It may be added that some of the people already believe that national control by corporations is at the root of the suggestion of national control of corporations. Mr. Vance does not believe that the Supreme Court will ever hold insurance to be commerce and thus bring it under the operation of the commerce clause of the constitution.

The Study of Old Greek Law. Frederic Earle Whitaker. At last there seems to be some sign of a belated recognition of the influence of the Greek mind upon the science of jurisprudence. The Roman has been so long extolled as the master of this science that it has been forgotten that as the Roman borrowed his art and his literature from the Greek, so he also borrowed his law. This short article does not attempt to furnish proof of the fact which it sets forth. But in the "vast legal treasure buried in those old speeches" (of the orators)

we doubtless have a mine whose contents will be of inestimable value to all who care for the science of the law.

International Arbitration the Product of the Modern International System. Hon. Hannis Taylor. From 1648, when the "first diplomatic Congress" assembled, to the "era of humanity" ushered in by the Peace of Paris in 1853, tentative efforts have been made to preserve peace between the nations. In 1899 there came the great Peace Conference at the Hague, then the Pan-American Congress of 1901–2, and the new treaties of obligatory arbitration between several of the great nations, limited in scope, but of great interest. Mr. Taylor holds it to be the special duty of the United States to aid the movement, and makes a plea for it to lend its moral influence to this end.

HARVARD LAW REVIEW.—February.

Equitable Conversion. III. C. C. Langdell. In this portion of his article Mr. Langdell, having finished the preliminary examination, reaches equitable conversion itself. This he divides, in discussion, into two kinds, direct and indirect. He gives a short description of direct equitable conversion for the purpose of distinguishing it from indirect equitable conversion, and devotes his paper to the discussion of the latter portion of the subject. These very important papers are to be continued.

The Development of Jurisprudence During the Past Century. Joseph H. Beale, Jr. Mr. Beale takes the word Jurisprudence in its most simple signification, and says: "My effort will be merely to suggest, in cases of a few branches of law where the changes seem to be typical, the course and reason of these changes. The developments found most striking are, first, in the direction of international constitutional law; second, the movement for codification; third, the increasing recognition of individual rights and protection of individuals; fourth, the development in the direction of business combination and association." This catalogue of subjects is merely given to show the scope of the article. The great interest of the paper and its treatment cannot be indicated.

The Right of a Belligerent to Destroy a Captured Prize. Francis F. Swayze. This practice was formerly conceded, it is well known, but of late years it has been regarded with disfavor, although "it is a right even at the present day universally recognized." The Turin Congress, says Mr. Swayze, adopted a set of rules justifying the act in five cases. Neutral ships are placed under still different rules, which are differently stated by the various authorities. On the whole, the lesson which we have learned from the discussion of the acts committed by the belligerents during the Russo-Japanese war is repeated, and no definite conclusion is attained in regard to these rights. We learn that fact and theory do not as yet agree, and that they have come no nearer an agreement as a result of the present war.

The Extension to the Admiralty of the Fellow-Servant Doctrine. Frederic Cunningham. It is here contended, and apparently it is a just contention, that the extension of this doctrine to the admiralty is entirely gratuitous, as the doctrine of *respondeat superior* "does not have its full force in the admiralty." It is also said: "It is all the more unfortunate at this late day, because the doctrine of fellow-servant, first enunciated in England in 1837 in the case of *Priestley* v. *Fowler,* has hardly been approved, and the legislatures both in England and this country by their employers' liability acts have been gradually paring it down and changing it." A list of cases is given in which the fellow-servant doctrine has been invoked by the Federal courts since *Halverson* v. *Nisen.*